



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit: 1774

Examiner: YAMNITZKY

# PETITION TO ACCEPT PAYMENT OF

EXTENSION FEE, OR IN THE

## ALTERNATIVE. PETITION TO REVIVE

UNINTENTIONALLY ABANDONED

## APPLICATION

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The Applicants respectfully petition the Commissioner to charge the Applicants for an extension of time in the matter of Patent Application No. 09/540,659 and grant the priority claim in the case of Patent Application No. 09/967,057, or in the alternative, Applicants respectfully petition the Commissioner to revive Patent Application No. 09/540,659 for being unintentionally abandoned. For this request, please consider the facts and arguments as follows:

1. Patent Application No. 09/540,659 (the parent application) was filed on March 31, 2000. A copy of the transmittal is attached hereto, and includes the statement "The Commissioner is hereby authorized to charge all required fees for extensions of time under §1.17 to Deposit Account No. 19-1970."
2. Patent Application No. 09/540,659 received a final Office Action having a mailing date of May 30, 2001.
3. Applicants filed a Continuation-in-Part (CIP) application (Patent Application No. 09/967,057) on September 28, 2001 claiming priority to Patent Application No. 09/540,659. A copy of the transmittal for the CIP application is attached hereto.

It is noted that the CIP application was filed during the six month period after mailing of the May 30, 2001 Office Action in the parent application. More specifically, it was mailed before the first month extension period lapsed. In addition, it is noted that the transmittal for the CIP application also included the statement "The Commissioner is hereby authorized to charge all required fees for extensions of time under §1.17 to Deposit Account No. 19-1970."

4. An Office Action having a mailing date of April 1, 2003 was received by the Applicants in the matter of the CIP application, wherein in Paragraph 2, the Examiner indicated that the Applicants did not comply with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. §120 because no reply was submitted to the Office Action mailed on May 30, 2001 in the matter of the parent application (Patent Application No. 09/540,659), and no extension of time was requested.
5. Since the transmittal for parent application (Patent Application No. 09/540,659) stated that "The Commissioner is hereby authorized to charge all required fees for extensions of time under §1.17 to Deposit Account No. 19-1970," in accordance with 37 CFR §1.136 (a)(3), this statement provides for a constructive petition for an extension of time in the parent application. Paragraph (a)(3) of 37 CFR §1.136 states, in part:

A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under Sec. 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission.

37 CFR §1.136 (a)(3).

Accordingly, by operation of 37 CFR §1.136 (a)(3), a constructive petition for an extension of time existed in the parent application, and thus, it is respectfully asserted that the USPTO should have charged the Applicants for a one-month extension in the case of the parent application, such that the parent case was not deemed abandoned, and the CIP application should have been granted its priority claim to the parent case because both applications were co-pending at the time the CIP application was submitted to the USPTO. In furtherance of this argument, the Applicants hereby re-authorize the USPTO to charge the Applicants for extension fees that are deemed correct for the parent application (Patent Application No. 09/540,659), with charges made to Deposit Account No. 19-1970.

6. In the alternative, in accordance with 37 CFR 1.137(b), the Applicants hereby petition to revive the parent application (Patent Application No. 09/540,659), because it was unintentional to abandon the parent application (Patent Application No. 09/540,659) without having first filed and perfected the priority claim for the CIP application. As evidence that the abandonment of the parent application was unintentional, reference is again made to the transmittal for the CIP application, which was titled a "UTILITY CONTINUATION-IN-PART PATENT APPLICATION TRANSMITTAL" and which transmittal also include a statement claiming priority to the parent application. Accordingly, the Applicants request that if the request set forth in Item 5 above is not granted, then it is alternatively requested that this petition to revive be granted for the parent application so that the claim for priority for the CIP application can be perfected with co-pendency of both applications.
7. It is also noted that the undersigned was telephoned by Examiner Small on March 4, 2002 in the matter of the parent application. Examiner Small inquired as to whether the parent application was to be considered abandoned and the undersigned agreed; however, at the time of the telephone call on March 4, 2002, such agreement was made with the then existing understanding that the CIP application was filed as co-pending with the parent application, and the undersigned did not learn of a problem

associated with the priority claim until the most recent April 1, 2003 Office Action was received in the matter of the CIP application. Thus, the statement by the undersigned on March 4, 2002 was unintentional, and the entire delay in paying the extension fee for the parent application was also unintentional.

8. The Applicants hereby authorize the USPTO to charge the Applicants for fees associated with a petition to revive Patent Application No. 09/540,659 if the request set forth in Item 5 above is not granted, with charges made to Deposit Account No. 19-1970. In addition, the Applicants also hereby re-authorize the USPTO to charge the Applicants for extension fees that are also deemed correct for the parent application (Patent Application No. 09/540,659), with charges made to Deposit Account No. 19-1970.

For the foregoing reasons, the Applicants respectfully request that accept payment of the extension fee to allow co-pendency between Patent Application No. 09/540,659 and Patent Application No. 09/967,057, or in the alternative, Applicants respectfully petition the Commissioner to revive Patent Application No. 09/540,659 for being unintentionally abandoned. In addition, the Applicants respectfully request that CIP Patent Application No. 09/967,057 be allowed to claim priority to Patent Application No. 09/540,659.

If any additional fees are owing with this Petition, please debit Deposit Account No. 19-1970.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Joseph E. Kovarik

Registration No. 33,005

1560 Broadway, Suite 1200

Denver, Colorado 80202-5141

(303) 863-9700

Date: 8/1/03

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